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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,535	03/26/2004	David M. Binder	7226-207	8973
27383	7590	07/12/2005	EXAMINER	
CLIFFORD CHANCE US LLP 31 WEST 52ND STREET NEW YORK, NY 10019-6131			GIBSON, KESHIA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/12/2005.

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,535

Applicant(s)

BINDER ET AL.

Examiner

Keshia Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,28,29,31,32 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,28,29,31,32 and 36-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5/2/05 have been fully considered but they are not persuasive. Applicant has argued:

1) Pocknell's carrier is neither "an elastic and supportive" nor "stretchable."

However, Pocknell's carrier provides support for the gel that has been applied to it and can therefore be considered "supportive." Furthermore, Pocknell's film is an elastomer, which can be defined as an elastic material that resembles rubber (i.e., resumes original shape when a deforming force is removed). "Stretchable" can be defined as "capable of being easily stretched and resuming former shape or size." As such, Pocknell's carrier is still considered to be an elastic, supportive, and stretchable carrier.

2) Fabo '076 does not anticipate applicant's two-ply composite of a silicone layer on one side and an elastic, supportive carrier on the other. However, any one layer of the gel in combination with the carrier layer can be considered a two-ply composite. In this case, the two-ply composite happens to comprise an additional gel layer. Thus, Fabo is considered to be a two-ply gel-carrier composite.

3) Fabo '363 does not anticipate an elastic, supportive carrier which is notstretchable because it is made from a non-woven, knitted or textile material, or perforated film, and further does not disclose a two-ply composite since the gel and the carrier material are to form a continuous layer. However, Fabo '363 teaches that the carrier may be an elastic textile material (column 2, lines 27-35). As a result, and in light

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of the earlier comments, the carrier material may be considered "elastic and supportive." Furthermore, although Fabo '363 disclose that the gel layer surrounds the elastic material (column 2, lines 27-35), a rationale similar to the one applied to Fabo '076. The encapsulation of the elastic material can be considered a two-ply composite of layer further comprising an addition gel layer.

4) Pocknell, Fabo '076, or Fabo '363 cannot render obvious an elastic modulus of about 50% because the materials are not supportive. However, as discussed in the previous points, Pocknell, Fabo '363, and Fabo '076 are all considered to disclose stretchable, supportive carriers. The elastic modulus of an object affects that objects ability to be stretched. Therefore, it would have been obvious to one of ordinary skill in the art to provide for a carrier with an elastic modulus of about 50%, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5) Fabo '363 does not cure the deficiencies of Fabo '076 because Fabo '076 is a wound dressing having silicone gel on both sides of a flexible netting. However, as stated in the previous office action, Fabo '076 and Fabo '363 are both layered dressings comprising a carrier layer and a gel layer. Also, previously stated, Fabo '363 teaches that the gel layer may contain additives to relieve pain or stimulate wound repair. Thus, Fabo '363 provides motivation for modifying Fabo '076 so as to provide the gel layer with additives.

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6) The teachings of Fabo '363 to incorporate additives to the wound dressing encapsulated with a gel does not render obvious a two-ply gel layer and carrier composite. However, as discussed earlier under item 5, Fabo '363 also discloses a layered dressing and further teaches that the gel layer may have additives that relieve pain or stimulate wound repair. Thus, it would have been obvious to one of ordinary skill in the art to modify Fabo ('076) by incorporating additives into the gel layer as taught by Fabo ('363) since doing so would provide additional avenues for pain relief and wound repair stimulation for the patient.

7) In response to the obviousness-type provisional double patenting rejection over applicant serial 09/931,974 that was applied to current application 10/810,535, Claims 1-2, 4-5, 30 and 35-36, applicant has agreed to file a Terminal Disclaimer if the application is granted. Examiner accepts this agreement.

8) The obviousness-type double patenting of applicant serial 09/931,974 in view of Fabo '363 is not effective since Fabo '363 does not teach a stretchable, supportive two-ply bandage. However, as discussed for several points earlier, Fabo '363 is considered to indeed teach a stretchable, supportive two-ply bandage. Furthermore, as discussed earlier, Fabo '363 provides substantial motivation for providing the gel layer with additives.

Despite applicant's arguments, Pocknell, Fabo '076, Fabo '363, Fabo '076 in view of Fabo '363, US patent application 09/931,974, and US patent app. '974 in view of Fabo '363 are all still considered to anticipate or render obvious the structural limitations

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set forth in Claims 1, 3, 5, 28-29, 31-32, and 36-39 (previously Claims 1-5 and 28-39) of the claimed invention, as presented in the previous Office Action (which has been modified and presented again, in view of applicant's amendments, below).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 5 28-29, 31, 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pocknell (US 4,991,574) in view of Docter (US 6,143,946).

In regard to currently amended Claim 1, Pocknell discloses a stretchable, supportive bandage comprising a gel layer **2** bonded to a stretchable carrier **3** (column 1, lines 57-61; Figure 1). Examiner considers the bonded surfaces of the gel layer **2** and carrier layer **3** to be the respective adhesion surfaces of each material. Furthermore, applicant is advised that the method of forming the product is not relevant to the issue of patentability of the product itself. Therefore, this limitation has not been given patentable weight. Pocknell further discloses that the gel layer **2** comprises silicone (column 1,

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lines 57-61; Figure 1). Pocknell does not disclose that the carrier is a stretchable loop portion of a hook and loop fastener.

Docter teaches a bandage 10 comprising an elastic carrier layer 12 and a gel layer 14.

Docter teaches adding hook-and-loop type straps 16 to the elastic layer bandage to allow the bandage 10 be wrapped and secured around a body part by connecting elements 18 of the straps 16 to the elastic layer 12 (column 3, lines 8-22). Thus, the elastic layer of Docter is considered to be the stretchable loop portion of a hook-and-loop type fastener. Pocknell and Docter are analogous art because they are from the same field of endeavor: bandages comprising elastic and gel layers. Thus, it would have been obvious to one of ordinary skill in the art to modify the bandage of Pocknell to provide the elastic layer as a stretchable loop fastener layer since doing so would allow the bandage to be wrapped and secured around a body part.

In regard to Claim 3, Pocknell in view of Docter discloses the claimed invention but does not expressly disclose that the carrier having an elastic modulus of about 50%. Although Pocknell in view of Docter does not disclose an elastic modulus of about 50%, Pocknell in view of Docter again does teach a stretchable carrier layer. The elastic modulus of an object affects that objects ability to be stretched. Therefore, it would have been obvious to one of ordinary skill in the art to provide for a carrier with an elastic modulus of about 50%, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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In regard to currently amended Claim 5, as discussed for Claim 1, Docter discloses the use of closure strips 16 (column 3, lines 8-22).

In regard to Claim 28, Pocknell discloses that the gel layer 2 may contain additives (column 2, lines 57-61).

In regard to Claim 29, applicant states that the formation of a sheet or roll is for manufacturing purposes and that the final shape of the claimed invention can be of limitless configurations (page 5, lines 8-13). The method of forming the product is not relevant to the issue of patentability of the product itself. Therefore, this limitation has not been given patentable weight.

In regard to Claim currently amended 31, Pocknell discloses that the silicone gel may be a cured polydiorganosiloxane resin (column 2, lines 2-32).

In regard to Claim currently amended 36, as discussed for Claims 1 and 5, Docter discloses that the bandage is secured about a body part with closure strips 16 (column 3, lines 8-22). The recitation that "the secured bandage provides musculo-skeletal support to the bandaged body part" is considered to be intended use. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations. Thus, the invention only needs to be capable of providing the intended use. The degree to which the bandage is to supply musculo-skeletal support is not stated and, since it is wrapped around a body part, the bandage is considered to provide musculo-skeletal support of some degree- even if only minimal.

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In regard to Claim 37-38, Pocknell in view of Docter discloses the claimed invention but does not expressly disclose that the bandage is wrapped around a joint or muscle and or further disclose that the joint is a knee, ankle, wrist, or an elbow. However, Pocknell in view of Docter does disclose that the bandage is to be wrapped around a body part. Furthermore, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations.

In regard to Claim 39, Pocknell in view of Docter discloses the claimed invention but does not expressly disclose that the bandage can be used for veterinary applications, while the earlier application does not. However, again, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations.

5. Claims 1, 3, 5, 29, 31, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabo (US 5,891,076).

In regard to currently amended Claim 1, Fabo '076 discloses a supportive, stretchable bandage comprising a gel layer **2,3** and a stretchable carrier **1** (Figure 1; column 3, line 62- column 4, line 13). Again, the method of forming the product is not relevant to the issue of patentability of the product itself. Therefore, the limitation of bonding adhesion

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layers has not been given patentable weight. Fabo further discloses that the gel layer 2,3 comprises silicone (column 2, line 66 - column, line 4).

Fabo '076 does not disclose that the carrier is a stretchable loop portion of a hook and loop fastener.

Docter teaches a bandage 10 comprising an elastic carrier layer 12 and a gel layer 14.

Docter teaches adding hook-and-loop type straps 16 to the elastic layer bandage to allow the bandage 10 be wrapped and secured around a body part by connecting elements 18 of the straps 16 to the elastic layer 12 (column 3, lines 8-22). Thus, the elastic layer of Docter is considered to be the stretchable loop portion of a hook-and-loop type fastener. Fabo '076 and Docter are analogous art because they are from the same field of endeavor: bandages comprising elastic and gel layers. Thus, it would have been obvious to one of ordinary skill in the art to modify the bandage of Fabo '076 to provide the elastic layer as a stretchable loop fastener layer since doing so would allow the bandage to be wrapped and secured around a body part.

In regard to Claim 3, Fabo '076 in view of Docter discloses the claimed invention but does not expressly disclose that the carrier having an elastic modulus of about 50%. Although Fabo '076 in view of Docter does not disclose an elastic modulus of about 50%, Fabo '076 in view of Docter again does teach a stretchable carrier layer. The elastic modulus of an object affects that objects ability to be stretched. Therefore, it would have been obvious to one of ordinary skill in the art to provide for a carrier with an elastic modulus of about 50%, since it has been held that discovering an optimum value

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of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to currently amended Claim 5, as discussed for Claim 1, Docter discloses the use of closure strips 16 (column 3, lines 8-22).

In regard to Claim 29, as discussed with Pocknell above, applicant states that the formation of a sheet or roll is for manufacturing purposes and that the final shape of the claimed invention can be of limitless configurations (page 5, lines 8-13). The method of forming the product is not relevant to the issue of patentability of the product itself. Therefore, this limitation has not been given patentable weight.

In regard to currently amended Claim 31, Fabo '076 in view of Docter discloses the claimed invention but does not expressly disclose that the silicone gel is a cured polydiorganosiloxane resin. However, it would have been obvious to one of ordinary skill in the art to create a silicone gel from a cured polydiorganosiloxane resin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In regard to Claim currently amended 36, as discussed for Claims 1 and 5, Docter discloses that the bandage is secured about a body part with closure strips 16 (column 3, lines 8-22). The recitation that "the secured bandage provides musculo-skeletal support to the bandaged body part" is considered to be intended use. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed

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structural limitations. Thus, the invention only needs to be capable of providing the intended use. The degree to which the bandage is to supply musculo-skeletal support is not stated and, since it is wrapped around a body part, the bandage is considered to provide musculo-skeletal support of some degree- even if only minimal.

In regard to Claim 37-38, Fabo '076 in view of Docter discloses the claimed invention but does not expressly disclose that the bandage is wrapped around a joint or muscle and or further disclose that the joint is a knee, ankle, wrist, or an elbow. However, Fabo '076 in view of Docter does disclose that the bandage is to be wrapped around a body part. Furthermore, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations.

In regard to Claim 39, Fabo '076 in view of Docter discloses the claimed invention but does not expressly disclose that the bandage can be used for veterinary applications, while the earlier application does not. However, again, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations.

6. Claims 1, 3, 5, 28-29, 31-32 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabo (US 5,340,363) in view of Docter (US 6,143,946).

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In regard to Claim currently amended 1, Fabo '363 discloses a supportive, stretchable bandage comprising a gel layer 2 and a stretchable carrier layer 1 (column 2, lines 4-16). Again, the process for forming the product by bonding adhesion layers has not been given patentable weight. Fabo '363 further discloses that the gel layer 2 comprises silicone (column 2, lines 27-35).

Fabo '363 does not disclose that the carrier is a stretchable loop portion of a hook and loop fastener.

Docter teaches a bandage 10 comprising an elastic carrier layer 12 and a gel layer 14. Docter teaches adding hook-and-loop type straps 16 to the elastic layer bandage to allow the bandage 10 be wrapped and secured around a body part by connecting elements 18 of the straps 16 to the elastic layer 12 (column 3, lines 8-22). Thus, the elastic layer of Docter is considered to be the stretchable loop portion of a hook-and-loop type fastener. Fabo '363 and Docter are analogous art because they are from the same field of endeavor: bandages comprising elastic and gel layers. Thus, it would have been obvious to one of ordinary skill in the art to modify the bandage of Fabo '363 to provide the elastic layer as a stretchable loop fastener layer since doing so would allow the bandage to be wrapped and secured around a body part.

In regard to Claim 3, Fabo '363 in view of Docter discloses the claimed invention except for the carrier having an elastic modulus of about 50%. Although Fabo '363 in view of Docter does not disclose an elastic modulus of about 50%, Fabo '363 in view of Docter again does teach a stretchable carrier layer. The elastic modulus of an object affects

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that objects ability to be stretched. Therefore, it would have been obvious to one of ordinary skill in the art to provide for a carrier with an elastic modulus of about 50%, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claim currently amended 5, as discussed for Claim 1, Docter discloses the use of closure strips 16 (column 3, lines 8-22).

In regard to Claim 28, Fabo '363 discloses that the gel layer 2 may contain additives (column 3, lines 30-36).

In regard to Claim 29, again, the formation of the bandage into a sheet or roll has not been given patentable weight.

In regard to Claim currently amended 31, Fabo '363 in view of Docter discloses the claimed invention but does not expressly disclose that the silicone gel is a cured polydioganosiloxane resin. However, it would have been obvious to one of ordinary skill in the art to create a silicone gel from a cured polydioganosiloxane resin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In regard to Claim currently amended 32, as discussed for Claim 28, Fabo '363 discloses that the gel layer 2 may contain additives, including topical medicaments or an emollient (column 3, lines 30-36).

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In regard to Claim currently amended 36, as discussed for Claims 1 and 5, Docter discloses that the bandage is secured about a body part with closure strips 16 (column 3, lines 8-22). The recitation that "the secured bandage provides musculo-skeletal support to the bandaged body part" is considered to be intended use. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations. Thus, the invention only needs to be capable of providing the intended use. The degree to which the bandage is to supply musculo-skeletal support is not stated and, since it is wrapped around a body part, the bandage is considered to provide musculo-skeletal support of some degree- even if only minimal.

In regard to Claim 37-38, Fabo '363 in view of Docter discloses the claimed invention but does not expressly disclose that the bandage is wrapped around a joint or muscle and or further disclose that the joint is a knee, ankle, wrist, or an elbow. However, Pocknell in view of Docter does disclose that the bandage is to be wrapped around a body part. Furthermore, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not differentiate the claimed invention from prior art satisfying the claimed structural limitations.

In regard to Claim 39, Fabo '363 in view of Docter discloses the claimed invention but does not expressly disclose that the bandage can be used for veterinary applications, while the earlier application does not. However, again, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be used does not

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differentiate the claimed invention from prior art satisfying the claimed structural limitations.

7. Claims 28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabo ('076) in view of Docter in further view of Fabo ('363).

In regard to Claim 28, Fabo ('076) in view of Docter disclose the claimed invention except for the gel layer containing additives. As discussed above, Fabo ('363) teaches a bandage having a carrier layer 1 and a gel layer 2. Fabo '363 teaches that the gel layer may contain additives to relieve pain or stimulate wound repair. Fabo '076 and Fabo '363 are analogous art because they are from the same field of endeavor: layered dressings comprising a carrier layer and a gel layer. Also, previously stated, Fabo goes on to teach that the gel layer may contain additives that relieve pain or stimulate wound repair. Thus, it would have been obvious to one of ordinary skill in the art to modify Fabo ('076) by incorporating additives into the gel layer as taught by Fabo ('363) since doing so would provide addition avenues for pain relief and wound repair stimulation for the patient.

In regard to Claim 32, as discussed for Claim 28, Fabo '363 teaches that the gel layer may contain additives to relieve pain or stimulate wound repair (topical medicament); and thus, it would have been obvious to one of ordinary skill in the art to modify Fabo ('076) by incorporating additives into the gel layer as taught by Fabo ('363) since doing

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so would provide addition avenues for pain relief and wound repair stimulation for the patient.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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9. Claims 1, 3, 5, 29, 31, and 36-39 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-5 of copending Application No. 09/931,974. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 4-5 of the earlier copending application "anticipate" Claims 1, 3, 5, 28-29, 31-32, and 36-39 of the current application.

Claims 1, 3, 5, 29, 31, and 36-39 are equivalent to Claims 1-5, 29-31 and 33-39 of the previously presented claims to which a double patenting rejection was applied and to which the applicant has agreed to file a terminal disclaimer.

Thus, it is apparent that the more specific claims 4-5 of the earlier application encompass Claims 1-5, 29-31, and 33-39 of the current application. Following the rationale in *In re Goodman* cited in the preceding paragraph, where the applicant has once been granted a patent containing a claim for the specific or narrower invention, the applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 28 and 32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 4 of copending Application No. 09/931,974 in view of *Fabo* ('363).

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As discussed above, Fabo ('363) teaches a bandage having a carrier layer 1 and a gel layer 2. Fabo goes on to teach that the gel layer may contain additives that relieve pain or stimulate wound repair (topical medicaments and/or emollients). The copending application and Fabo '363 are analogous art because they are from the same field of endeavor: layered dressings comprising gel layers. Thus, it would have been obvious to one of ordinary skill in the art to modify Claims 4 of the copending application by incorporating additives into the gel layer as taught by Fabo ('363) since doing so would provide additional avenues for pain relief and wound repair stimulation for the patient.

This is a provisional obviousness-type double patenting rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



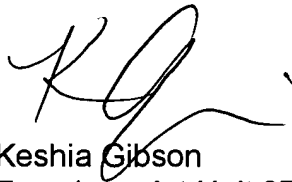
Keshia Gibson
Examiner, Art Unit 3761
klg 7/9/05

TATYANA ZALUKAEVA
PRIMARY EXAMINER



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'K. Gibson', with a stylized flourish extending from the bottom right.

Keshia Gibson
Examiner, Art Unit 3761
klg 7/05